

(c) In case of flight cancellations or flight delays, refunds shall be paid immediately upon presentation of an unused flight coupon or upon demand of the charterer or his representative (or in case of the engagement by one charterer of less than the capacity of an aircraft, upon demand of any one charterer or his representative) to the air carrier or its agent.

(d) The requirements in paragraphs (a), (b), and (c) of this section for immediate refunds or alternative transportation shall not apply to the extent that there is an unavoidable delay due solely to weather.

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-1127, 44 FR 33055, June 8, 1979]

§208.33a Substitution or subcontracting.

Supplemental air carriers may subcontract the performance of services which they have contracted to perform only to air carriers authorized by the Board to perform such services.

§§ 208.34—208.35 [Reserved]

§208.36 Substitute transportation in emergencies.

(a) A carrier shall be permitted to transport a passenger on a charter flight with a group other than his own or on a ferry flight (as defined in §241.03 of this subchapter) under the following circumstances:

(1) [Reserved]

(2) The transportation is for return passage only;

(3) When the passenger is required to return at a different time than his own charter flight due to emergency circumstances beyond the passenger's control; and

(4) The charter group with which the passenger is to travel expresses no objection to his participation in the charter flight.

For the purposes of this paragraph, "emergency circumstances beyond the passenger's control" shall include illness or injury to the passenger or a member of his immediate family; death of a member of the passenger's immediate family; or weather conditions or unforeseeable and unavoidable delays

in ground transportation or connecting air transportation.

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-1222, 46 FR 28379, May 26, 1981]

§208.37 Exemption.

Charter air carriers are hereby exempted from section 401(n)(4) of the Act.

[ER-1142, 44 FR 50825, Aug. 30, 1979]

§208.38 Suspension of exemption authority.

The Board reserves the power to suspend the exemption authority of any charter air carrier, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

[ER-1142, 44 FR 50825, Aug. 30, 1979]

PROTECTION OF CUSTOMERS' DEPOSITS

§208.40 Protection of customers' deposits.

(a) Except as provided in paragraph (c) of this section, no supplemental air carrier shall perform any air transportation services (other than a cargo charter trip) originating in the United States or any overseas military personnel charter trips, as defined in part 372 of this chapter, nor shall such air carrier accept any advance payment in connection with any such charter trip, unless there is on file with the Board a copy of a currently effective agreement made between said carrier and a designated bank, by the terms of which all sums payable in advance to the carrier by charterers, in connection with any such charter trip to be performed by said carrier, shall be deposited with and maintained by the bank as escrow holder, the agreement to be subject to the following conditions:

(1) The charterer (or its agent) shall pay the carrier either by check or money order made payable to the depository bank. Such check or money order and any cash received by the carrier from a charterer (or his agent) shall be deposited in, or mailed to, the bank no later than the close of the business day following the receipt of the check or money order or the cash, along with a statement showing the name and address of the charterer (or

his agent): *Provided, however,* That where the charter transportation to be performed by a carrier is sold through a travel agent the agent may be authorized by the carrier to deduct his commission and remit the balance of the advance payment to the carrier either by check or money order made payable to the designated bank.

(2) The bank shall pay over to the carrier escrowed funds with respect to a specific charter only after the carrier has certified in writing to the bank that such charter has been completed: *Provided, however,* That the bank may be required by the terms of the agreement to pay over to the carrier a specified portion of such escrowed funds, as payment for the performance of the outbound segment of a round trip charter upon written certification by the carrier that such segment has been completed.

(3) Refunds to a charterer from sums in the escrow account shall be paid directly to such charterer or its assigns. Upon written certification from the carrier that a charter has been canceled, the bank shall turn over directly to the charterer or its assigns all escrowed sums (less any cancellation penalties as provided in the charter contract) which the bank holds with respect to such canceled charter: *Provided, however,* That, in the case of a charter for less than the entire capacity of an aircraft (see §208.6 (c)) escrowed funds shall be turned over to a charterer or its assigns only if the carrier's written certification of cancellation of such charter includes a specific representation that either the charter has been canceled by the carrier or, if the charter has been canceled by the charterer, that the carrier has accepted a substitute charterer.

(4) The bank shall maintain a separate accounting for each charter flight.

(5) As used in this section the term "bank" means a bank, savings and loan institution, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) The escrow agreement required under paragraph (a) of this section shall not be effective until approved by the Board. Claims against the escrow

may be made only with respect to non-performance of air transportation.

(c) The carrier may elect, in lieu of furnishing an escrow agreement pursuant to paragraph (a) of this section, to furnish and file with the Board a surety bond which guarantees to the United States Government the performance of all air transportation services (other than cargo charter trips) originating in the United States and of all overseas military personnel charter trips, as defined in part 372 of this chapter, to be performed, in whole or in part, by the carrier pursuant to contracts entered into by such carrier after the execution date of the bond. The amount of such bond shall be unlimited. Claims under the bond may be made only with respect to the non-performance of air transportation.

(d) The bond permitted by paragraph (a) of this section shall be in the form set forth as Appendix A to this part. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the carrier is incorporated or in which it maintains its principal place of business. For the purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the supplemental air carrier, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time limit set forth in the notification, no amounts payable in advance by customers for the subject charter trips shall be accepted by the carrier.

(e) The bond required by this section shall provide that unless the charterer files a claim with the carrier, or, if he is unavailable, with the surety, within sixty (60) days after cancellation of a charter trip with respect to which the

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charterer's advance payments are secured by the bond, the surety shall be released from all liability under the bond to such charterer for such charter trip. The contract between the carrier and the charterer shall contain notice of this provision.

(Approved by the Office of Management and Budget under control number 3024-0001)

[ER-810, 38 FR 20256, July 30, 1973, as amended by ER-1340, 48 FR 31013, July 6, 1983]

Subpart B—Provisions Relating to Military Charters

§ 208.100 Applicability of subpart.

This subpart sets forth the special rules applicable to military charters.

§ 208.101 [Reserved]

§ 208.102 Substitute service.

Supplemental air carriers are authorized to provide "substitute service" as defined in this part, subject to the provisions of part 288 of this chapter.

§ 208.103 Terms of service.

The provisions of § 208.32(d) shall apply to charters under this subpart.

[ER-1127, 44 FR 33055, June 8, 1979]

Subpart B1—Provisions Relating to Military Backhaul Charters

§ 208.150 Military backhaul exemption.

Subject to the provisions of this part and all other applicable rules, regulations, conditions, or requirements, supplemental air carriers are hereby exempted from the provisions of section 401 of the Act to the extent necessary to permit them to engage in overseas or foreign "supplemental air transportation" on the reverse leg of a charter performed in the opposite direction under a contract with the Department of Defense calling for one-way service.

Subpart C—Provisions Relating to Pro Rata Charters

§ 208.200 Applicability of subpart.

This subpart sets forth the special rules applicable to pro rata charters.

REQUIREMENTS RELATING TO AIR CARRIERS

§ 208.200a Solicitation and formation of a chartering group.

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip, except after a charter contract has been signed.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight, except after a charter contract has been signed.

§ 208.201 Pretrip notification and charter contract.

(a) Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charterer with a copy of this part 208.³ The charter contract shall include a provision that the charterer, and any agent thereof, shall only act with regard to the charter in a manner consistent with this part and that the charterer shall within due time submit to the carrier such information as specified in § 208.215. The carrier shall also require that the charterer and any travel agent involved shall furnish it at least 30 days prior to departure of the first flight the statements of supporting information required in §§ 208.217 and 208.204, respectively, unless the charter has been contracted for within 30 days before the date of departure, in which event the statement and attachments shall be filed with the carrier on the date the charter contract is executed. In the event of a substitution of carriers, the carrier with whom the statements and attachments have been

³ Copies of this part are available by purchase from the Superintendent of Documents, Washington, D.C. 20402. Single copies will be furnished without charge on written request to the Publications Service Section, Civil Aeronautics Board, Washington, D.C. 20428.